

ESTTA Tracking number: **ESTTA578181**

Filing date: **12/20/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Lithera, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	9191 Towne Center Drive, Suite 400 San Diego, CA 92122 UNITED STATES		

Correspondence information	Jeffrey L. Van Hoosear Attorney for Petitioner Knobbe, Martens, Olson & Bear, LLP 2040 Main Street, 14th Floor Irvine, CA 92614 UNITED STATES efiling@knobbe.com Phone:efiling@knobbe.com
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Registration Subject to Cancellation

Registration No	4012388	Registration date	08/16/2011
Registrant	Kythera Biopharmaceuticals, Inc. 27200 West Agoura Road, Suite 200 Calabasas, CA 91301 GERMANY		

Goods/Services Subject to Cancellation

Class 042. First Use: 2006/00/00 First Use In Commerce: 2006/00/00 All goods and services in the class are cancelled, namely: Research and development of pharmaceutical preparations and aesthetic preparations; medical and scientific research information in the fields of pharmaceutical preparations, aesthetic preparations and clinical trials; and providing a website featuring information about investigational pharmaceutical preparations and aesthetic preparations

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Abandonment	Trademark Act section 14

Attachments	2013-12-20 Petitioner's Lithera, Inc.'s Petition for Cancellation-LITHE.023N.PDF(151466 bytes) LITHE Exhibit.pdf(20133 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/JVH/
Name	Jeffrey L. Van Hoosear
Date	12/20/2013

featuring information about investigational pharmaceutical preparations and aesthetic preparations

Class: 42
Filed: January 25, 2011
Alleged First Use: 2006
Registered: August 16, 2011

As grounds for cancellation, it is alleged that:

1. Petitioner is the owner of U.S. Registration No. 4,067,542 registered on December 6, 2011 for the mark LITHERA in connection with “Pharmaceutical preparations for reducing the size and appearance of adipose deposits in a body” (“Petitioner’s Registration”) in International Class 5. A printout of the TSDR records for this registration is attached.

2. Petitioner has been, and continues to be, damaged in that Trademark Registration No. 4,012,388 is the basis for an infringement claim against Lithera in a civil action (Civil Action No. CV13-6338) filed by Respondent in District Court in the Central District of California.

3. Upon information and belief, Respondent has never offered any of the services identified in Respondent’s Registration as set forth above (“Respondents’ Services”) to any third party as required to have valid service mark rights.

4. Upon information and belief, Respondent has never provided or sold any of Respondents’ Services to any third party.

5. Upon information and belief, to the extent that Respondent has ever offered or provided any of Respondents’ Services, such services have only been provided for Respondent in the furtherance of Respondents’ own product development.

6. Upon information and belief, Respondent knew at the time it filed both the Statement of Use which resulted in Respondents’ Registration, and also at the time it filed the Section 8 Declaration which maintained Respondent’s Registration, that it had not offered or

provided any of Respondents' Services to any third party.

7. Upon information and belief, Respondents' Registration was obtained and has been maintained by fraud.

8. In view of Respondent's non-use of the KYTHERA mark shown in U.S. Registration No. 4,012,388, Respondent is not entitled to continued registration of the KYTHERA mark pursuant to Section 14(3) of the Trademark Act, 15 U.S.C. § 1064(3). Accordingly, Petitioner maintains that Respondent's Registration should be cancelled.

9. In view of Respondent's knowledge that it had not offered or provided any of Respondent's Services in connection with the mark KYTHERA shown in U.S. Registration No. 4,012,388 to any third party, Respondent is not entitled to continued registration of the KYTHERA mark pursuant to Section 14(3) of the Trademark Act, 15 U.S.C. § 1064(3). Accordingly, Petitioner maintains that Respondent's Registration should be cancelled.

10. As Petitioner's continued use of its mark as shown in Petitioner's Registration will be impaired by the continued registration of said mark of Respondent, and as Petitioner believes that Respondent has never used the mark shown in U.S. Registration No. 4,012,388, and that Respondent had knowledge of such non-use, said registration should be canceled.

Petitioner reserves the right to amend this Petition to allege other claims in the event discovery of other information indicates they are appropriate.

WHEREFORE, Petitioner prays that U.S. Registration No. 4,012,388 be canceled and that this Petition for Cancellation be sustained in favor of Petitioner.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: December 20, 2013

By:  _____

Jeffrey L. Van Hoosear
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Irvine, CA 92614
949-760-0404
efiling@knobbe.com
Attorneys for Petitioner,
Lithera, Inc,

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **PETITION FOR CANCELLATION** upon Registrant's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid on December 20, 2013 addressed as follows:

Richard Y. Kim
McDermott Will E Emery LLP
500 North Capitol Street, N.W.
Washington, DISTRICT OF COLUMBIA 20001


Betty de la Torre

16845192
121213

SUITE 1100
SAN DIEGO, CALIFORNIA 92121
UNITED STATES

Phone: 858-677-1423

Fax: 858-677-1465

Correspondent e-mail: gtdocket@dlapiper.com

Correspondent e-mail Yes
Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Dec. 06, 2011	REGISTERED-PRINCIPAL REGISTER	
Nov. 04, 2011	NOTICE OF ACCEPTANCE OF STATEMENT OF USE E-MAILED	
Nov. 03, 2011	LAW OFFICE REGISTRATION REVIEW COMPLETED	77312
Nov. 02, 2011	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Oct. 24, 2011	STATEMENT OF USE PROCESSING COMPLETE	66154
Oct. 21, 2011	USE AMENDMENT FILED	66154
Oct. 21, 2011	TEAS STATEMENT OF USE RECEIVED	
Feb. 17, 2011	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Feb. 16, 2011	EXTENSION 4 GRANTED	66154
Feb. 15, 2011	EXTENSION 4 FILED	66154
Feb. 15, 2011	TEAS EXTENSION RECEIVED	
Dec. 15, 2010	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Nov. 23, 2010	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Nov. 22, 2010	EXTENSION 3 GRANTED	66154
Nov. 19, 2010	EXTENSION 3 FILED	66154
Nov. 19, 2010	TEAS EXTENSION RECEIVED	
Apr. 24, 2010	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Apr. 23, 2010	EXTENSION 2 GRANTED	66154
Apr. 22, 2010	EXTENSION 2 FILED	66154
Apr. 22, 2010	TEAS EXTENSION RECEIVED	
Jan. 04, 2010	EXTENSION 1 GRANTED	66154
Nov. 13, 2009	EXTENSION 1 FILED	66154
Jan. 04, 2010	CASE ASSIGNED TO INTENT TO USE PARALEGAL	66154
Nov. 13, 2009	TEAS EXTENSION RECEIVED	
May 26, 2009	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Mar. 03, 2009	PUBLISHED FOR OPPOSITION	
Feb. 11, 2009	NOTICE OF PUBLICATION	
Jan. 23, 2009	LAW OFFICE PUBLICATION REVIEW COMPLETED	77312
Jan. 23, 2009	ASSIGNED TO LIE	77312
Jan. 09, 2009	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jan. 09, 2009	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Jan. 08, 2009	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Jan. 08, 2009	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Nov. 03, 2008	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Nov. 03, 2008	NON-FINAL ACTION E-MAILED	6325
Nov. 03, 2008	NON-FINAL ACTION WRITTEN	76463
Oct. 28, 2008	ASSIGNED TO EXAMINER	76463
Aug. 19, 2008	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Nov. 03, 2011

Assignment Abstract Of Title Information

Summary

Total Assignments: 2

Registrant: LITHERA, INC.

Assignment 1 of 2

Conveyance: CHANGE OF NAME

Reel/Frame: [4420/0827](#)

Pages: 8

Date Recorded: Nov. 23, 2010

Supporting Documents: [assignment-tm-4420-0827.pdf](#)

Assignor

Name: [LIPOTHERA, INC.](#)

Execution Date: Sep. 04, 2008

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: [LITHERA, INC.](#)

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: 9191 TOWNE CENTER DRIVE, SUITE 400
SAN DIEGO, CALIFORNIA 92122

Correspondent

Correspondent Name: STACY L. TAYLOR

Correspondent Address: DLA PIPER LLP US
4365 EXECUTIVE DRIVE, SUITE 1100
SAN DIEGO, CA 92121

Domestic Representative - Not Found

Assignment 2 of 2

Conveyance: SECURITY INTEREST

Reel/Frame: [4845/0882](#)

Pages: 18

Date Recorded: Aug. 20, 2012

Supporting Documents: [assignment-tm-4845-0882.pdf](#)

Assignor

Name: [LITHERA, INC.](#)

Execution Date: Aug. 17, 2012

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: [SILICON VALLEY BANK](#)

Legal Entity Type: CORPORATION

State or Country Where Organized: CALIFORNIA

Address: 3003 TASMAN DRIVE
SANTA CLARA, CALIFORNIA 95054

Correspondent

Correspondent Name: ERIN O'BRIEN

Correspondent Address: C/O COOLEY LLP
4401 EASTGATE MALL
SAN DIEGO, CA 92121

Domestic Representative - Not Found